

MM 97-182/
W 97-192

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November 4, 1997

MORRIS H. PARRISH
MAYOR

FCC MAIL ROOM

Senator Phil Gramm
370 Russell Senate Bldg.
Washington, D.C. 20510

Dear Senator Gramm:

We are writing you about the Federal Communications Commission and its attempts to preempt local zoning of cellular, radio and TV towers by making the FCC the "Federal Zoning Commission" for all cellular telephone and broadcast towers. Both Congress and the courts have long recognized that zoning is a peculiarly local function. Please immediately contact the FCC and tell it to stop these efforts which violate the intent of Congress, the Constitution and principles of Federalism.

In the 1996 Telecommunications Act, Congress expressly reaffirmed local zoning authority over cellular towers, thanks in great part to your effort. It told the FCC to stop all rulemakings where the FCC was attempting to become a Federal Zoning Commission for such towers. Despite this instruction from Congress, the FCC is now attempting to preempt local zoning authority in three different rulemakings.

Cellular Towers - Radiation: Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act with the sole exception that municipalities cannot regulate the radiation from cellular antennas if it is within limits set by the FCC. The FCC is attempting to have the "exception swallow the rule" by using the limited authority Congress gave it over cellular tower radiation to review and reverse any cellular zoning decision in the U.S. which it finds is "tainted" by radiation concerns, even if the decision is otherwise perfectly permissible. In fact, the FCC is saying that it can "second guess" what the true reasons for a municipality's decision are, need not be bound by the stated reasons given by a municipality and doesn't even need to wait until a local planning decision is final before the FCC acts.

Some of our citizens are concerned about the radiation from cellular towers. We cannot prevent them from mentioning their concerns in a public hearing. In its rulemaking the FCC is saying that if any citizen raises this issue that this is sufficient basis for a cellular zoning decision to immediately be taken over by the FCC and potentially reversed, even if the municipality expressly says it is not considering such statements and the decision is completely valid on other grounds, such as the impact of the tower on property value or aesthetics.

Cellular Towers - Moratoria: Relatedly the FCC is proposing a rule banning the moratoria that some municipalities impose on cellular towers while they revise their zoning ordinances to accommodate the increase in the numbers of these towers. Again, this violates the Constitution and the directive from Congress preventing the FCC from becoming a Federal Zoning Commission.

CITY OF IRVING

P.O. Box 152288, IRVING, TX 75015-2288 • 825 W. IRVING BLVD, IRVING, TX 75060

Radio/TV Towers: The FCC's proposed rule on radio and TV towers is as bad: It sets an artificial limit of 21 to 45 days for municipalities to act on any local permit (environmental, building permit, zoning or other). Any permit request is automatically deemed granted if the municipality doesn't act in this timeframe, even if the application is incomplete or clearly violates local law. And the FCC's proposed rule would prevent municipalities from considering the impacts such towers have on property values, the environment or aesthetics. Even safety requirements could be overridden by the FCC! And all appeals of zoning and permit denials would go to the FCC, not to the local courts.

This proposal is astounding when broadcast towers are some of the tallest structures known to man -- over 2,000 feet tall, taller than the Empire State Building. The FCC claims these changes are needed to allow TV stations to switch to High Definition Television quickly. But *The Wall Street Journal* and trade magazines state there is no way the FCC and broadcasters will meet the current schedule anyway, so there is no need to violate the rights of municipalities and their residents just to meet an artificial deadline.

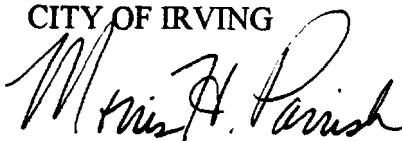
These actions represent a power grab by the FCC to become the Federal Zoning Commission for cellular towers and broadcast towers. They violate the intent of Congress, the Constitution and principles of Federalism. This is particularly true given that the FCC is a single purpose agency, with no zoning expertise, that never saw a tower it didn't like.

Please do three things to stop the FCC: First, write the new FCC Chairman William Kennard and FCC Commissioners Susan Ness, Harold Furchtgott-Roth, Michael Powell and Gloria Tristani telling them to stop this intrusion on local zoning authority in cases WT 97-197, MM Docket 97-182 and DA 96-2140; second, join in the "Dear Colleague Letter" currently being prepared to go to the FCC from many members of Congress; and third, oppose any effort by Congress to grant the FCC the power to act as a "Federal Zoning Commission" and preempt local zoning authority.

The following people at national municipal organizations are familiar with the FCC's proposed rules and municipalities' objections to them: Barrie Tabin at the National League of Cities, 202-626-3194; Eileen Huggard at the National Association of Telecommunications Officers and Advisors, 703-506-3275; Robert Fogel at the National Association of Counties, 202-393-6226; Kevin McCarty at the U.S. Conference of Mayors, 202-293-7330; and Cheryl Maynard at the American Planning Association, 202-872-0611. Feel free to call them if you have questions.

Very truly yours,

CITY OF IRVING



Morris Parrish
Mayor

Cc: (see attached list)

COPY LIST

Senator John McCain
241 SROB
Washington, DC 20510-0303

Senator Conrad Burns
187 SDOB
Washington, DC 20510-2603

Senator Kay Bailey Hutchison
283 SROB
Washington, DC 20510-4304

Senator Slade Gorton
730 SHOB
Washington, DC 20510-4701

Senator Dianne Feinstein
331 SHOB
Washington, DC 20510-0504

Representative Tim Bliley
2409 RHOB
Washington, DC 20515-4607

Representative W. J. Tauzin
2183 RHOB
Washington, DC 20515-1803

Representative Edward J. Markey
2133 RHOB
Washington, DC 20515-2107

Representative John D. Dingell
2328 RHOB
Washington, DC 20515-2216

Representative Bob Goodlatte
123 CHOB
Washington, DC 20515-4606

Representative James Moran
1214 LHOB
Washington, DC 20515-4608

Representative Bart Stupak
1410 LHOB
Washington, DC 20515-2201

Representative Joe Barton
2264 RHOB
Washington, DC 20515-4306

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Assistant Executive Director
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1620 Eye Street, 4th Floor
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Ms. Cheryl Maynard
Government Affairs Coordinator
American Planning Association
1776 Massachusetts Ave., NW, 4th Floor
Washington, DC 20036

CITY OF IRVING

COUNCIL RESOLUTION NO. 11-20-97-692

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FCC
WHEREAS, the Federal Communications Commission (FCC) proposes to make the FCC a "Federal Zoning Board" and:

- Violate principles of Federalism, where zoning is recognized as being a local concern on which the Federal government cannot and should not intrude.
- Violate the Federal telecommunications statutes which, with cellular towers in particular, preserve local zoning authority and prevent the FCC from becoming involved on zoning matters.
- Represent an unprecedented intrusion on local affairs where the FCC can "second guess" true motives for municipal decisions, even where a decision completely complies with applicable law.
- Violates the freedom of speech and right to petition government for municipalities and their residents, by threatening to penalize cities and residents that express concern over radiation from cellular antennas, even if they do so in ways specifically allowed by Congress and the Constitution.
- On broadcast towers, violate constitutional and other protections by allowing some of the tallest structures known to mankind (over 2,000 feet tall) to be built without any local approval and impose timing constraints which bear no relation to local zoning procedures or constitutional protections.
- Improperly prevent property values, aesthetics, or environmental concerns from being considered in zoning broadcast and TV towers and even specify that safety considerations are not paramount.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF IRVING, TEXAS:

SECTION I. THAT the City Council hereby urges the United States Congress and the Federal Communications Commission to oppose attempts to preempt local zoning of cellular, radio and television facilities and to oppose any national zoning for cellular and broadcast towers.

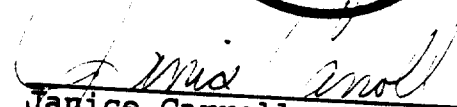
SECTION II. THAT the Mayor is authorized to execute the attached letters and transmit them to their respective addressees.

SECTION III. THAT this resolution shall take effect from and after its final date of passage, and it is accordingly so ordered.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF IRVING, TEXAS, this 20th day of November, A.D., 1997.

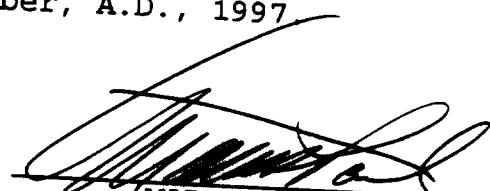


ATTEST:


Janice Carroll, CMC
City Secretary

APPROVED AS TO FORM:


Don J. Rorschach
City Attorney


MORRIS H. PARRISH
MAYOR